

U.S. Department of Labor

Administrative Review Board
200 Constitution Ave. NW
Washington, DC 20210-0001



IN THE MATTER OF:

RUSSELL MARKS,

ARB CASE NO. 2025-0084

COMPLAINANT,

ALJ CASE NO. 2025-TAX-00017

ALJ THERESA C. TIMLIN

v.

DATE: February 27, 2026

CONOPCO, INC., d/b/a UNILEVER,

RESPONDENT.

Appearances:

For the Complainant:

Russell Marks; *Pro Se*; New York City, New York

For the Respondent:

Samantha Thomas, Esq., and Jonathan M. Carrillo, Esq.; *Littler Mendelson, P.C.*; Newark, New Jersey

Before JOHNSON, Chief Administrative Appeals Judge, and BURRELL, Administrative Appeals Judge

SECOND ORDER DENYING RECONSIDERATION

This case arises under the Taxpayer First Act (TFA) and its implementing regulations.¹ On August 5, 2025, a United States Department of Labor Administrative Law Judge issued an order (ALJ Order) denying Complainant Russell Marks's request that the ALJ recuse herself from these proceedings. On August 15, 2025, Complainant emailed the Administrative Review Board (ARB or Board), which the Board construed as a Petition for Review of the ALJ Order.

¹ 26 U.S.C. § 7623(d); 29 C.F.R. Part 1989 (2025).

The Board issued a Decision and Order Denying Interlocutory Appeal (D. & O.) on November 20, 2025, dismissing Complainant's appeal. On November 23, 2025, Complainant sent an email to the Board, which the Board construed as a Motion for Reconsideration. The Board issued an Order Denying Reconsideration on December 16, 2025. On February 4, 2025, Complainant emailed the Board again, attaching a Petition to Vacate Order Denying Reconsideration & Appeal to US District Court (Petition to Vacate). The Petition to Vacate serves as a second motion for reconsideration.² For the reasons set forth below, we deny Complainant's second request for reconsideration.

BACKGROUND

On or about April 14, 2025, Complainant filed a complaint with the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA), alleging that Respondent violated the TFA by retaliating against him. On May 14, 2025, OSHA issued findings, concluding that there was no reasonable cause to believe Respondent violated the TFA. Complainant objected to OSHA's findings and requested a hearing with the Department's Office of Administrative Law Judges. The matter was assigned to ALJ Theresa C. Timlin on July 10, 2025. The claim remains pending with the ALJ as of the date of this Order. ALJ Timlin previously handled a separate complaint filed by Complainant under the TFA, *Marks v. Unilever*, 2024-TAX-00007.

After this case was assigned to ALJ Timlin, Complainant emailed the ALJ asking, among other things, that she recuse herself from these proceedings. The ALJ construed Complainant's email as a motion, which she denied in the ALJ Order issued on August 5, 2025. On August 15, 2025, Complainant emailed the Board, asking the Board to "rule on my request for Judge Timlin to recuse herself due to conflict of interest?" The Board construed the email as a Petition for Review.

Because the ALJ had not yet issued a decision fully disposing of all claims in Complainant's complaint, the Petition was for interlocutory review (i.e., review of a non-final decision).³ The Board may only consider and dispose of interlocutory

² In the Petition to Vacate, Complainant states that the Petition to Vacate is "filed pursuant to the Board's inherent authority to reconsider its decisions in the interests of justice and due process." Petition to Vacate at 1.

³ See *Gloss v. Tata Chems. N. Am.*, ARB No. 2022-0054, ALJ No. 2020-CAA-00008, slip op. at 2 (ARB Sept. 20, 2022).

appeals “in exceptional circumstances, provided such review is not prohibited by statute.”⁴ The Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals in stages before the final order.⁵

Accordingly, the Board issued an Order to Show Cause on August 26, 2025, ordering Complainant to file a brief by September 9, 2025, explaining why the Board should not dismiss this interlocutory appeal. The Board cautioned Complainant that “[f]ailure to timely respond to this Order may result in dismissal of the appeal without further order.” The Board sent the Order to Show Cause via certified mail to Complainant’s address of record (which is the same address he identified in his Petition to Vacate). The Board also sent a courtesy copy of the Order to Show Cause to the email address Complainant used to file his Petition with the Board (which is also the same email address Complainant has used in his frequent correspondence with the Board).⁶

On September 8, 2025—the day before his response was due—Complainant responded to the email in which the Board sent him a copy of the Order to Show Cause. Complainant stated: “Good morning. Unfortunately I have a medical emergency and need an extension on the deadline to respond. Please see attached from my doctor. Can you move this deadline out 30 days please.” Complainant attached a note from an urgent care center dated August 26, 2025, stating “[p]lease excuse from work/school due to a medical condition from 8/26 to until he is seen by a specialist in 1-2 weeks for reevaluation.” The note did not elaborate on Complainant’s medical conditions and Complainant has not submitted any other information regarding his unspecified medical conditions.

At Complainant’s request, the Board issued an Order Granting Extension of Time on September 10, 2025, extending Complainant’s deadline to file a response to October 9, 2025. Again, the ARB cautioned Complainant that “if he fails to file a timely and conforming brief in response to the Order to Show Cause, the Board may dismiss this appeal without further notice.” The Board also stated that “further

⁴ Secretary’s Order No. 01-2020 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 85 Fed. Reg. 13186 (Mar. 6, 2020).

⁵ *Gunther v. Deltek, Inc.*, ARB Nos. 2012-0097, -0099, ALJ No. 2010-SOX-00049, slip op. at 2 (ARB Sept. 11, 2012) (citations omitted).

⁶ The mailed copy of the Order to Show Cause was returned to the Board because Complainant did not claim it.

extension requests by Complainant will not be granted, unless justified by extraordinary circumstances and supported by appropriate documentation.” Once again, the Board sent the Order Granting Extension of Time to Complainant via certified mail and email.⁷ Despite the Board’s warnings, Complainant did not file a response to the Order to Show Cause and the Board received no further extension requests or other communications from Complainant.

The Board issued a Decision and Order Denying Interlocutory Appeal (D. & O.) on November 20, 2025, dismissing Complainant’s appeal on two independent grounds. First, we dismissed the appeal for Complainant’s failure to file a response brief.⁸ As we explained in the D. & O., the Board has the inherent “power to dismiss a case for failure to prosecute in an effort to control its docket and to promote the efficient disposition of its cases.”⁹ Pursuant to this authority, the Board “may dismiss a complaint in a case in which the complainant failed to comply with the Board’s orders.”¹⁰ Complainant was ordered to file a response, was granted extra time to file a response, and was warned that failing to file a response could result in dismissal. Even so, Complainant did not file a response and the Board heard no word from him for 42 days after the extended deadline to file had passed.

Second, and independently, we dismissed the appeal because it did not involve “exceptional circumstances” that would justify immediate interlocutory review by the Board.¹¹ Specifically, we noted that the Board will typically only consider an interlocutory appeal if it meets the “collateral order” exception, which applies if the order appealed: (1) conclusively determines the disputed question; (2) resolves an important issue completely separate from the merits of the action; and (3) is effectively unreviewable on appeal from a final judgment.¹² This exception is strictly construed to avoid the “hazard that piecemeal appeals will burden the efficacious administration of justice and unnecessarily protract

⁷ Once again, the mailed copy of the Order Granting Extension of Time was returned to the Board because Complainant did not claim it.

⁸ D. & O. at 3.

⁹ *Gonzales v. Global Crossing Airlines*, ARB No. 2025-0040, ALJ No. 2024-AIR-00029, slip op. at 2 (ARB May 16, 2025) (citation omitted).

¹⁰ *Id.* (citation omitted).

¹¹ D. & O. at 3-4.

¹² *Kossen v. Asia Pac. Airlines*, ARB No. 2023-0041, ALJ No. 2023-AIR-00001, slip op. at 3 (ARB Aug. 22, 2023) (citation omitted).

litigation.”¹³ We determined that Complainant’s appeal, which only challenged the ALJ’s decision not to recuse herself from these proceedings, was not appropriate for immediate interlocutory review because disqualification issues are fully reviewable on appeal from the ALJ’s final decision.¹⁴ The Board sent the D. & O. to Complainant on November 20, 2025 via certified mail and email.¹⁵

On November 23, 2025, Complainant responded to the email in which the Board sent him a copy of the D. & O. Complainant stated “[t]hank you for this email, but I did not receive any of the ‘ORDER TO SHOW CAUSE’.” He also stated that his email box was full for months and that he had “extensive medical issues and couldn’t meet the tight deadlines regardless.” He offered to provide documentation of his medical conditions and of his full inbox, and asked “if I’m able to appeal since I didn’t receive these orders to show cause and since I have multiple medical conditions.”

Complainant sent another email to the Board on November 24, 2025, forwarding an earlier email he sent to the Office of Administrative Law Judges claiming that he had not received correspondence from the ALJ because his email box was full, and again stating that he had been dealing with health issues. Complainant also left a voicemail with the Board on November 26, 2025, reiterating that he had not received the Order to Show Cause because his email box was full. Complainant then sent a third email to the Board on November 30, 2025, stating that he had come across “URGENT evidence” regarding the retaliation underlying his case before the Department of Labor, claiming that Respondent “retaliated against me by lying to the State of CT on my employment status.”¹⁶

We interpreted Complainant’s November 23, 2025 email as a motion for reconsideration and issued an Order Denying Reconsideration on December 16, 2025. We denied reconsideration for several reasons. First, we stated that even if we accepted as true that Complainant did not receive our prior orders and did not have

¹³ *Greene v. U.S. Env’t Prot. Agency*, ARB No. 2002-0050, ALJ No. 2002-SWD-00001, slip op. at 4 (ARB Sept. 18, 2002) (citations omitted).

¹⁴ *See Manoharan v. HCL Am., Inc.*, ARB No. 2021-0031, ALJ Nos. 2018-LCA-00029, 2021-LCA-00009, slip op. at 4 (ARB June 30, 2021).

¹⁵ Again, the mailing was returned to the Board because Complainant did not claim it.

¹⁶ Complainant also copied the Board on an email to the Office of Administrative Law Judges on December 8, 2025.

the opportunity to respond, we would still have denied Complainant's appeal because it is not appropriate for immediate interlocutory review.¹⁷

Additionally, although Complainant claimed that he did not receive the Board's Order to Show Cause, the record reflected that he did, in fact, receive that Order. As stated above, the Board sent Complainant a copy of the Order to Show Cause via email on August 26, 2025. Complainant later responded to that email, asking for more time to respond to the Order to Show Cause, which the Board granted. Thus, it was clear that Complainant received the Board's Order and simply did not respond to it as required, despite asking for and receiving additional time.¹⁸

Finally, we stated that Complainant's assertion that his health issues prevented him from "meet[ing] the tight deadlines" did not justify his failure to respond to the Order to Show Cause in a timely fashion in this case.¹⁹ Although Complainant never identified or described his health conditions or how they inhibited his ability to respond in this appeal, we recognized that Complainant may indeed have had conditions that could have justified accommodation, like extensions of time.²⁰ Indeed, the Board granted Complainant's one and only request to extend the deadline to respond to the Order to Show Cause.²¹ However, by the time the Board issued the D. & O., Complainant had already had 86 days to respond to the Board's Order to Show Cause—far more than the original, standard 14-day deadline and far more than the additional 30 days Complainant requested and received.²² Had Complainant needed even more time, he should have filed a second request for extension before the Board issued its decision.²³ Once again, the Board sent the Order Denying Reconsideration to Complainant via certified mail and email.²⁴

On December 16, 2025, Complainant emailed the Board stating that "there is substantial new additional information to this case that has been uncovered since

¹⁷ Order Denying Reconsideration at 4-5.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 5.

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 5-6.

²³ *Id.* at 6.

²⁴ Again, the Order was returned to the Board because Complainant did not claim it.

my last communication and I would like that reviewed by the court.” Complainant asked for another extension to file and stated that he “got this case confused with another legal matter I’m dealing with.” He also stated that he could provide medical documentation, if needed.

Complainant emailed the Board again on December 17, 2025, stating that an individual working for the law firm representing Respondent “reached out to my attorney’s employer to try and get her in trouble and thus denying me my right to legal representation.” He stated that he had “let Judge Timlin and her team know” of this new development as well. Complainant then sent additional emails on December 18, 2025, and January 13, 2026, regarding the same allegation of attorney interference.

On January 14, 2026, the Board responded to Complainant’s January 13 email. The Board stated:

Good afternoon Mr. Marks,

On December 16, 2025, the Administrative Review Board issued an Order Denying Reconsideration in ARB No. 2025-0085, *Marks v. Conopco, Inc. d/b/a Unilever*. Our records indicate that the decision was served on you. Further, the Board provided you with a courtesy copy of the Order via email on December 16, 2025. A courtesy copy is attached to this email as well.

Since the Board has issued a decision pursuant to 29 C.F.R. § 1987.110, you do not have an appeal currently pending before the Board and no further action is forthcoming.

Later that same day, Complainant responded via email, stating “[y]es but things have clearly changed since that order was issued,” and again referred to Respondent’s alleged interference with his attorney. He sent a second email that evening, again claiming that the alleged attorney interference was “absolutely ‘exceptional circumstances.’”

On January 19, 2026, Complainant again emailed the Board, asking for “a copy of the Certified Administrative Record so I can appeal to the US Court of Appeals.” He also asked the Board to identify the correct court for his appeal.

He sent a second request for the “Certified Administrative Record” via email on January 26, 2026.

The Board responded via email on January 27, 2026. The Board stated:

Good afternoon,

The Taxpayer First Act (TFA) and its implementing regulations provide for judicial review in certain circumstances and delineate under what circumstances the Board will transmit the administrative record to a reviewing court. Please refer to 26 U.S.C. § 7623(d), 29 C.F.R. § 1989.112, and 29 C.F.R. § 1989.114. Additionally, please note that, pursuant to 29 C.F.R. § 1989.112, the Department of Labor will transmit the record of proceedings before the ALJ to the appropriate court pursuant to the Federal Rules of Appellate Procedure and the local rules of such court.

Complainant responded to the Board’s email later that day, stating that he intended to “file in the appeals court in Madison, Wisconsin.”

On February 4, 2026, Complainant emailed the Board yet again, this time attaching the Petition to Vacate. In the Petition to Vacate, Complainant again insists that he did not get “actual notice” of the Board’s orders because his “email inbox was full and not receiving messages” and because he did not claim the certified mail copies sent to his address of record.²⁵ He also reiterates that he suffers from “ongoing serious medical conditions that severely limited his ability to respond to legal deadlines, beyond the initial 1-2 week period referenced in his urgent care documentation.”²⁶ Complainant also accuses the Board of failing to provide “appropriate accommodation” given his pro se status.²⁷ Complainant also argues that the Board should accept this interlocutory appeal because of “the prejudice that occurs when a case proceeds before a conflicted decision-maker.”²⁸

²⁵ Petition to Vacate at 1-2.

²⁶ *Id.* at 2.

²⁷ *Id.* at 3.

²⁸ *Id.* at 4.

At the conclusion of his Petition to Vacate, Complainant requests the Board: (1) vacate the D. & O. and Order Denying Reconsideration; (2) grant Complainant leave to respond to the Board's Order to Show Cause, "with an appropriate deadline accounting for Complainant's medical circumstances;" (3) permit Complainant to "submit complete medical documentation establishing the extent and duration of his incapacity;" (4) "[i]n the alternative, accept the interlocutory appeal and address the merits of the ALJ recusal issue;" and (5) "[g]rant such other and further relief as the Board deems just and proper."²⁹ Complainant also states: "Please consider this motion an appeal to the US District Court as well."³⁰ Complainant also filed a copy of his Petition to Vacate with the United States District Court for the Western District of Wisconsin (Case No. 3:26-cv-00086-wmc).

DISCUSSION

1. Complainant's Request for Reconsideration is Untimely

The Board may reconsider its decision if a motion for reconsideration is filed within a "reasonable time" of the date on which the Board issued its decision.³¹ In applying this timeliness requirement, the Board and its predecessors have considered a motion for reconsideration if it was filed within a "short time" after the decision.³² The Board has typically found that twelve days or less is a "short period."³³ In comparison and by way of example, the Board has determined that motions for reconsideration filed thirty-four days, sixty days, and four months after the Board's decision were not timely.³⁴

²⁹ *Id.* at 4-5.

³⁰ *Id.* at 5.

³¹ *Henrich v. Ecolab, Inc.*, ARB No. 2005-0030, ALJ No. 2004-SOX-00051, slip op. at 11 (ARB May 30, 2007) (Order Denying Reconsideration).

³² *Id.* at 15.

³³ *See id.* at 12 n.27, 17 (collecting cases).

³⁴ *Id.* at 17 (60 days); *Powers v. Paper, Allied-Indus. Chem. & Energy Workers Int'l Union*, ARB No. 2004-0111, ALJ No. 2004-AIR-00019, slip op. at 4-5 (ARB Dec. 21, 2007) (Order Granting Reconsideration in Part) (thirty-four days); *Williams v. United Airlines, Inc.*, ARB No. 2008-0063, ALJ No. 2008-AIR-00003, slip op. at 2 (ARB June 23, 2010) (four months) (Order Denying Reconsideration).

The Board issued its D. & O. on November 20, 2025, and its Order Denying Reconsideration on December 16, 2025. Complainant submitted his Petition to Vacate on February 4, 2026, 76 days after the D. & O. and 50 days after the Order Denying Reconsideration. Thus, the Petition to Vacate is not timely, and we deny it on this basis alone.³⁵

2. Complainant Fails to Meet the Standard for Reconsideration

Even if timely, we would still deny the Petition to Vacate because it does not meet the Board's standard for reconsideration. The Board generally will only reconsider its decision if the movant demonstrates:

- (i) material differences in fact or law from those presented to the Board of which the moving party could not have known through reasonable diligence, (ii) new material facts that occurred after the Board's decision, (iii) a change in the law after the Board's decision, or (iv) failure to consider material facts presented to the Board before its decision.^[36]

We decipher four arguments from Complainant's Petition to Vacate and various emails to the Board since we issued our first Order Denying Reconsideration: (1) Complainant lacked "actual notice" of the Board's orders, including the instruction to respond to the Order to Show Cause; (2) Complainant's medical condition warranted an extension of the deadline to the Order to Show Cause; (3) Complainant should have been afforded additional latitude as a pro se party; and (4) Respondent has engaged in attorney interference. None of these arguments justify reconsideration.

³⁵ We may consider an untimely motion for reconsideration if the complainant shows good cause for the delay or if the complainant raises grounds for relief under Rule 60(b) of the Federal Rules of Civil Procedure. *Henrich*, ARB No. 2005-0030, slip op. at 15. Neither circumstance is present here.

³⁶ *Shah v. Albert Fried & Co.*, ARB No. 2020-0063, ALJ No. 2019-SOX-00015, slip op. at 2-3 (ARB Jan. 31, 2023) (citation omitted).

A. Complainant's Alleged Lack of Actual Notice

Complainant argues that he did not receive “actual notice” of the Board’s orders.³⁷ He contends that his “email inbox was full and not receiving messages, a technical issue that persisted for months and prevented receipt of critical correspondence.”³⁸ He also asserts that “[t]he Board’s certified mailings were returned as unclaimed.”³⁹

Complainant’s claimed lack of notice or receipt of the Board’s orders is not new—he argued the same in his first motion for reconsideration⁴⁰ and the Board already considered and rejected this argument.⁴¹ Thus, Complainant’s argument does not qualify for reconsideration under the Board’s standard.

Furthermore, Complainant’s alleged lack of notice is meritless and, even if true, was easily avoidable with minimal diligence. Regarding his alleged full inbox, Complainant controls his email. He has not alleged or shown that he was unaware that his inbox was full (or filling up),⁴² that he did not have options to remedy the situation (like deleting messages to free up space), that he took any reasonable and timely steps to remedy the situation, or that he took any steps to alert the ARB to the purported problem so that alternative service or notice could have been provided. Courts routinely reject excuses like Complainant’s concerning email.⁴³

³⁷ Petition to Vacate at 2.

³⁸ *Id.* at 1.

³⁹ *Id.* at 2.

⁴⁰ Complainant’s Nov. 23, 2025 Email.

⁴¹ Order Denying Reconsideration at 5.

⁴² To the contrary, Complainant states it was an issue that “persisted for months.” Petition to Vacate at 1.

⁴³ *E.g.*, *Love v. Kijakazi*, No. 22-10008, 2022 WL 3998589, at * 1 (5th Cir. Sept. 1, 2022) (finding no grounds for relief where notice was filtered to spam folder or otherwise missed because of “faulty email settings”); *Trevino v. City of Fort Worth*, 944 F.3d 567, 572 (5th Cir. 2019) (finding no grounds for relief where notice was filtered to plaintiff’s spam folder); *Martin v. Senko (USA) Inc.*, No. 5:22-CV-01715, 2022 WL 17408414, at *2-3 (W.D. La. Nov. 17, 2022) (finding no grounds for relief where email was not delivered due to syncing issue with server); *Johnson v. Baptist Mem’l Health Care Corp.*, No. 2:18-cv-02509-SHM-egc, 2019 WL 5847850, at *3 (W.D. Tenn. Nov. 7, 2019) (finding no grounds for relief where notice was missed due to email server malfunction).

Additionally, Complainant's excuse that his email inbox was full is remarkable given that Complainant has elected to communicate and file with the Board, *almost exclusively* via email in this action. The Board has several other filing and communication methods available, like the Board's Electronic Filing System, regular mail, commercial delivery, or personal delivery, all of which the Board laid out to Complainant in the Order to Show Cause.⁴⁴ Even so, Complainant elected to use email.⁴⁵ Given his insistence on using email to pursue this appeal, it is stunning that Complainant would allow his inbox to fill so that, allegedly, he could not receive the Board's emails and notices.

Additionally, it is apparent that Complainant received most (if not all) of the Board's emails, including the emails attaching the Order to Show Cause, the D. & O., and the Order Denying Reconsideration, despite his inbox allegedly being full at some indeterminate period. The Board has emailed Complainant six times and he has responded directly to five of those emails, often on the same day or within a matter of days:

- (1) On August 26, 2025, the Board emailed a courtesy copy of the Order to Show Cause; Complainant responded to the email on September 8, 2025
- (2) On November 20, 2025, the Board emailed a courtesy copy of the D. & O.; Complainant responded to the email on November 23, 2025
- (3) On December 16, 2025, the Board emailed a courtesy copy of the Order Denying Reconsideration; Complainant responded to the email the same day
- (4) On January 14, 2026, the Board emailed a response to an earlier email from Complainant; Complainant responded to the email the same day
- (5) On January 27, 2026, the Board emailed a response to an earlier email from Complainant; Complainant responded to the email the same day

⁴⁴ Order to Show Cause at 4-5.

⁴⁵ Indeed, since initiating this appeal, Complainant has emailed the Board 17 times.

Thus, to the extent Complainant's email inbox was ever full, that was a temporary condition that did not prevent him from receiving or responding to nearly all the Board's emails.⁴⁶

The lone email to which Complainant did not respond was the Board's September 10, 2025 email sending a courtesy copy of the Order Granting Extension of Time, which granted Complainant an additional 30 days to respond to the Order to Show Cause. Even if we assume that Complainant did not receive this one email, Complainant still demonstrated a lack of diligence in determining his deadline to respond. The Board issued this Order two days after Complainant emailed the Board asking for an extension of 30 days to respond to the Order to Show Cause. Complainant knew at the time the Board emailed him that he had requested an extension of 30 days to respond to the Order to Show Cause and that, without an extension, his deadline would have expired on September 9, 2025. Even so, Complainant did not attempt to contact the Board to determine the status of his motion or his deadline to respond to the Order to Show Cause. Furthermore, Complainant requested only 30 additional days to respond to the Order to Show Cause. Even if Complainant was unaware of whether the Board had granted his extension, he should have still endeavored to respond within that 30-day window or, if more time was needed to respond, requested another extension. He did neither, and the Board finally dismissed Complainant's appeal 73 days after it last heard from Complainant and 42 days after the extended deadline to respond to the Order to Show Cause expired.

Complainant's arguments about the Board's certified mailings are also meritless. In addition to emailing copies of all its orders in this case, the Board also sent all its orders to Complainant via certified mail at the address Complainant has included in his filings with the Board. All four of the orders have been returned to the Board as unclaimed by Complainant. Complainant has not explained why he did not or could not claim any of the orders. He may not willfully or negligently refuse to accept the Board's correspondence, then feign ignorance of or seek relief from the contents of the correspondence now. In any event, as already explained,

⁴⁶ In the Order Denying Reconsideration, we noted that Complainant responded to the Board's email sending a courtesy copy of the Order to Show Cause. Order Denying Reconsideration at 5. Complainant argues in the Petition to Vacate that "[t]he Board's logic conflates receipt of *one* message with receipt of *all* messages." Petition to Vacate at 2 (emphasis original). Clearly, Complainant received at least *five of the six messages* the Board sent him, including, perhaps most importantly, the Order to Show Cause directing him to explain why the Board should accept his interlocutory appeal.

Complainant certainly received the Order to Show Cause, D. & O., and Order Denying Reconsideration via email, and should have inquired further with the Board regarding the Order Granting Extension of Time if he did not receive it.

B. Complainant's Medical Condition

Complainant also asserts that he “was experiencing ongoing serious medical conditions that severely limited his ability to respond to legal deadlines, beyond the initial 1-2 week period referenced in his urgent care documentation.”⁴⁷ Complainant asserts that the Board failed to “account” for the ongoing nature of his condition by failing to anticipate that he might need additional time to respond to the Order to Show Cause before the Board dismissed his appeal.⁴⁸

Like Complainant's notice arguments, the Board squarely addressed this argument in its first Order Denying Reconsideration.⁴⁹ Thus, Complainant's argument does not qualify for reconsideration under the Board's standard.

Even if we considered Complainant's argument again, we would not change our analysis. As we observed in the Order Denying Reconsideration, Complainant has never clearly identified or described his health conditions or how they inhibit his ability to respond in this appeal. Furthermore, despite professing that his medical conditions have inhibited his ability to respond to the Order to Show Cause, Complainant has been able to repeatedly email the Board (17 times since he initiated this appeal), file the Petition to Vacate with the Board, and initiate a federal action in the United States District Court for the District of Wisconsin.

Nevertheless, as we stated in the Order Denying Reconsideration, we recognize and appreciate that Complainant may indeed have conditions that could have justified accommodation or additional extensions of time, had he asked for them. Indeed, we granted Complainant's one and only request to extend the deadline to respond to the Order to Show Cause. In fact, the Board ultimately waited *more than twice as long as* Complainant requested before dismissing his

⁴⁷ Petition to Vacate a 2.

⁴⁸ *Id.* at 3.

⁴⁹ Order Denying Reconsideration at 5-6.

appeal.⁵⁰ If Complainant needed more than the additional 30 days he requested or more than the 86 days in total the Board waited after issuing the Order to Show Cause, Complainant could have and should have asked for it before the Board dismissed his case. He did not do so. Therefore, the Board reasonably dismissed this appeal when it did not receive a response to the Order to Show Cause or other correspondence or contact from Complainant.

Complainant argues that as “a pro se litigant facing serious medical issues,” he “may not have understood that he needed to file *another* extension request when he never received confirmation that his medical issues were considered extraordinary circumstances.”⁵¹ Complainant also appears to suggest that the Board should have somehow anticipated that he would have needed more than the additional 30 days he asked for to respond to the Order to Show Cause and should have preemptively granted him an indefinite extension of time.⁵²

The Board did give Complainant “confirmation” that his professed medical condition justified the extension when it issued the Order Granting Extension of Time. Furthermore, it would be unreasonable for Complainant to assume that he would *not* need to file a second extension of time if he believed he needed additional time to respond to the Order to Show Cause. Complainant requested a specific, finite extension—30 days—in his original request for an extension, which the Board granted. Again, if he needed additional time or accommodation, he could and should have requested it, as he did the first time.

C. Complainant’s Pro Se Status

Next, Complainant argues that the Board failed to afford him the leniency he was due as a pro se litigant.⁵³ Once again, this argument does not meet the Board’s standard for reconsideration—it does not involve new or different facts or law, or a failure by the Board to consider material facts.

⁵⁰ Complainant requested a 30-day extension on September 8, 2025; the Board did not dismiss the appeal for 73 more days.

⁵¹ Petition to Vacate at 3 (emphasis original).

⁵² *Id.* (arguing that the Board “fails to account for the ongoing nature of serious medical conditions” and suggesting that the note from urgent care accompanying his original request for extension “contemplates an ongoing medical issue requiring specialist intervention, not a brief, self-limiting condition.”).

⁵³ *Id.*

Furthermore, Complainant’s argument is meritless. As we recognized in our Order Denying Reconsideration, we typically afford certain latitude and leniency to pro se litigants.⁵⁴ However, we also “must be able to impose appropriate sanctions . . . when they fail to comply with the . . . procedures in the administrative process,” for a “pro se party may not be allowed to avoid the risks of failure that attend his decision to forgo expert assistance.”⁵⁵

In this case, we extended Complainant significant latitude. We promptly granted, in full, Complainant’s one and only request for an extension of time to respond to the Order to Show Cause (despite Complainant requesting the extension the day before his response was due, despite Complainant failing to identify or describe his health conditions or how they inhibited his ability to respond in this appeal, and despite Complainant failing to file the request for an extension by an appropriate method as outlined in the Order to Show Cause). Furthermore, we ultimately waited for more than twice the amount of time Complainant requested before dismissing this appeal. We also clearly laid out our procedural rules and expectations in the Order to Show Cause, including for motions for extensions of time, and accepted certain filings Complainant submitted via email, despite previously informing Complainant that email filings would not be accepted.⁵⁶ Finally, although we could have dismissed Complainant’s appeal for failing to file a response to the Order to Show Cause as ordered, we ultimately considered the underlying basis for Complainant’s appeal.⁵⁷ Thus, we afforded Complainant the latitude he was due.

⁵⁴ Order Denying Reconsideration at 5.

⁵⁵ *Phox v. The Savoy at 21C*, ARB No. 2021-0057, ALJ No. 2019-FDA-00014, slip op. at 3 n.9 (ARB Jan. 6, 2022) (quoting *Canterbury v. Adm’r, Wage & Hour Div., U.S. Dep’t of Lab.*, ARB No. 2003-0135, ALJ No. 2002-SCA-00011, slip op. at 3-4 (ARB Dec. 29, 2004)); see also *LoSacco v. City of Middletown*, 71 F.3d 88, 92 (2d Cir. 1995) (“Although *pro se* litigants should be afforded latitude, they generally are required to inform themselves regarding procedural rules and to comply with them.”) (internal quotations and citations omitted).

⁵⁶ Order to Show Cause at 4-5 (“Self-represented parties who choose not to use the EFS system must file all pleadings, including briefs, appendices, motions, and other supporting documentation, by mail or by personal or commercial delivery. Email filings will ***not*** be accepted, absent extraordinary circumstances.”) (emphasis original).

⁵⁷ D. & O. at 3-4.

D. Alleged Attorney Interference

Although not presented in his Petition to Vacate, Complainant asserted in various emails to the Board that Respondent's counsel somehow interfered with his ability to retain counsel.⁵⁸ Complainant asserted in one email that this alleged attorney interference "is absolutely 'exceptional circumstances,'" perhaps referring to the standard for another extension to respond to the Order to Show Cause and/or the standard for reconsideration.

Complainant has not explained how the alleged attorney interference had anything to do with the issue of ALJ recusal—which was the **only** issue on appeal to the Board. To the extent he believes that Respondent somehow engaged in attorney interference, that issue is not before the Board and has no bearing on this appeal, and therefore cannot serve as grounds for reconsideration.

3. ALJ Recusal is Not an Issue for Immediate Interlocutory Appeal

We also emphasize, for the third time, that even if we set aside the fact that Complainant failed to respond to our Order to Show Cause, we would still have dismissed this appeal. The Board generally does not accept petitions for review of non-final orders issued by an ALJ, and the Secretary of Labor and the Board have held many times that interlocutory appeals are generally disfavored and that there is a strong policy against piecemeal appeals in stages before the final order.⁵⁹ As we explained in our D. & O. and Order Denying Reconsideration,⁶⁰ the Board has squarely and repeatedly held that ALJ disqualification issues are fully reviewable on appeal from the ALJ's final decision and the Board does not accept them for final

⁵⁸ Complainant raised the issue of attorney interference in his December 17, 2025, December 18, 2025, January 13, 2026, and January 14, 2026 emails to the Board.

⁵⁹ *Gunther*, ARB Nos. 2012-0097, -0099, slip op. at 2.

⁶⁰ D. & O. at 4; Order Denying Reconsideration at 4-5.

review.⁶¹ Federal courts repeatedly and routinely reach the same result.⁶² Indeed, the law in this area is so settled that the Board has even dismissed interlocutory appeals concerning ALJ disqualification or recusal without requesting or receiving briefing from the parties.⁶³

Furthermore, we are satisfied at this juncture that Complainant would not have offered any argument in response to the Order to Show Cause that would have persuaded us to depart from this well-settled law. In the Petition to Vacate, Complainant argued that his concerns about the ALJ had “substantial merit,” that warranted immediate review, citing the “prejudice that occurs when a case proceeds before a conflicted decision-maker.”⁶⁴ He then argued that allowing the case to proceed without immediate review risks wasting judicial resources, unnecessary delay, potential prejudice to Complainant, and “[e]rosion of public confidence in the administrative adjudication process.”⁶⁵

Even if these risks exist in this case, they are insufficient to render the case appropriate for immediate interlocutory review. As we laid out in our Order to Show Cause, to justify immediate interlocutory review, Complainant must be able to show, among other things, that the order being appealed would be “effectively unreviewable on appeal from final judgment.”⁶⁶

To be “effectively unreviewable,” the right sought to be vindicated must “be, for all practical and legal purposes, destroyed if it were not vindicated prior to final

⁶¹ *E.g.*, *Lewis v. Deepwell Energy Servs., LLC*, ARB Nos. 2025-0037, -0039, -0051, ALJ No. 2024-STA-00042, slip op. at 9 (ARB Apr. 23, 2025); *Mitchell v. Manning Trucking, Inc.*, ARB No. 2025-0010, ALJ No. 2024-STA-00020, slip op. at 4-5 (ARB Dec. 17, 2024); *Kossen*, ARB No. 2023-0041, slip op. at 3-4; *Manoharan*, ARB No. 2021-0031, slip op. at 4.

⁶² *E.g.*, *McDaniel v. Hunter Warfield, Inc.*, No. 24-1415, 2024 WL 4200052, at *1 (4th Cir. Sept. 16, 2024); *Briscoe v. Amazon.com, Inc.*, Nos. 24-3100, -3106, 2024 WL 5321297, at *1 (10th Cir. Aug. 23, 2024); *Thompson v. Comm’r of Internal Rev.*, 742 F. App’x 316, 317 (9th Cir. Nov. 14, 2018); *Campbell v. Baylard*, 740 F. App’x 111, 112 (8th Cir. Oct. 17, 2018); *Mischler v. Bevin*, 887 F.3d 271, 271 (6th Cir. 2018).

⁶³ *E.g.*, *Lewis*, ARB Nos. 2025-0037, -0039, -0051; *Kossen*, ARB No. 2023-0041.

⁶⁴ Petition to Vacate at 3-4.

⁶⁵ *Id.* at 4.

⁶⁶ Order to Show Cause at 3 (citing *Kossen*, ARB No. 2023-0041, slip op. at 3).

judgment.”⁶⁷ In this case, if Complainant proceeds before this ALJ and ultimately does not prevail, he can file an appeal of the final judgment and raise any concerns he had about the ALJ’s decision not to recuse herself then. If the Board agrees with Complainant at that time that the ALJ should have recused herself, and that her refusal to do so prejudiced Complainant in these proceedings, the Board can order necessary relief, including a new hearing with a new ALJ. As long as the rights at issue “can be adequately vindicated by other means, the chance that the litigation at hand might be speeded, or a particular injustice averted, does not provide a basis for” immediate appellate review of an interlocutory order.⁶⁸ Thus, even if this relief would not be the desired result by Complainant or might result in delay or waste of resources, the Board would still be able to “adequately vindicate” Complainant’s rights at that time. Thus, the issue is not subject to immediate review.

4. “Appeal” to U.S. District Court

As noted above, Complainant emailed the Board asking for a copy of the “Certified Administrative Record so I can appeal to the US Court of Appeals.” In his Petition to Review, Complainant also asked the Board to “[p]lease consider this motion an appeal to US District Court as well.” A search of the federal courts’ Pacer system reflects that Complainant filed a copy of the Petition to Vacate in the United

⁶⁷ *Priddle v. United Airlines, Inc.*, ARB No. 2021-0064, ALJ No. 2020-AIR-00013, slip op. at 8 (ARB Jan. 26, 2022) (internal quotations and citations omitted).

⁶⁸ *Mohawk Indus. v. Carpenter*, 558 U.S. 100, 107 (2009) (internal quotations and citation omitted); *see also Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 871-72 (1992) (“A fully litigated case can no more be untried than the law’s proverbial bell can be unrung, and almost every pretrial or trial order might be called ‘effectively unreviewable’ in the sense that relief from error can never extend to rewriting history. Thus, erroneous [orders] may burden litigants in ways that are only imperfectly reparable by appellate reversal of a final district court judgment But if immediate appellate review were available every such time, Congress’s final decision rule would end up a pretty puny one”) (internal quotations and citations omitted); *see generally* CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 3911.4 (3d ed. Sept. 2025 update) (“The mere burden of submitting to trial proceedings that will be wasted if the appellant’s position is correct does not support collateral order appeal. Nor is it enough to show that a wrong order may cause tactical disadvantages that cannot be undone even by a second trial. The final judgment rule rests on a determination that ordinarily these costs be borne to support the greater benefits that generally flow [from] denying interlocutory appeal.”).

States District Court for the Western District of Wisconsin (No. 3:26-cv-00086-wmc).⁶⁹

If Complainant believes he is entitled to appeal and that there are grounds to do so, he may appeal with the appropriate court in accordance with applicable law. The Board cannot “consider” the Petition to Vacate as “an appeal to US District Court”—Complainant must appeal directly with the appropriate court.

A party may appeal the Secretary of Labor’s final order to the appropriate United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the complainant resided on the date of such violation.⁷⁰ Alternatively, if the Secretary of Labor has not issued a final decision within 180 days of the filing of the complaint with OSHA and there is no showing that such delay is due to the bad faith of the complainant, the complainant may bring an action at law or equity for de novo review in the appropriate district court of the United States.⁷¹ This “kick out” to district court is a de novo proceeding, not an appeal, and divests jurisdiction from the Department of Labor.⁷²

⁶⁹ On February 20, 2026, the District Court dismissed Complainant’s complaint without prejudice because, “without more information, the court cannot determine whether it has jurisdiction in this case.” *Marks v. Conopco, Inc.*, No. 3:26-cv-00086-wmc, slip op. at 2 (W.D. Wis. Feb. 20, 2026). The District Court stated that it would give plaintiff until March 13, 2026, to amend his complaint. *Id.* at 2-3.

⁷⁰ 26 U.S.C. § 7623(d)(2)(B)(i) (incorporating the rules and procedures of 49 U.S.C. § 42121(b)); 49 U.S.C. § 42121(b)(4)(A); *see also* 29 C.F.R. § 1989.112(a). The Board will not opine on whether its D. & O. is subject to review under this provision; that decision must be made by the reviewing court, if an appeal is filed.

⁷¹ 26 U.S.C. § 7623(d)(2)(A)(ii); *see also* 29 C.F.R. § 1989.114(a). The Board will not opine on whether Complainant satisfies the conditions for filing in a district court.

⁷² The Board does not interpret Complainant’s filing in the Western District of Wisconsin as a complaint for de novo review of the underlying TFA action. If Complainant intended the filing as a de novo complaint, Complainant must notify the Board and the ALJ. The Board’s position may also change depending on the nature and contents of any amended complaint Complainant files in the District Court.

CONCLUSION

For the foregoing reasons, Complainant's second motion for reconsideration is **DENIED.**

SO ORDERED.

RANDEL K. JOHNSON
Chief Administrative Appeals Judge

THOMAS H. BURRELL
Administrative Appeals Judge